(xi) none of the furniture or articles in the room in which the deceased was found was upset, and there were no other visible signs of a struggle or fight;

(xii) the fatal stab wound was likely to have been caused by a curved downward thrust into the deceased's chest, and was not likely to have been the result of the deceased running into a knife held in a slightly downward position;

(xiii) soon after the accused stated that he had killed a man in Toa Payoh, the murder of a man in Toa Payoh was reported in the *Sin Min Daily News* and the *Straits Times*. One of these newspapers described the victim as a temple medium. The accused showed these newspapers to Leong Fook Hing and Ong Kok Hua, and told them that the person referred to in the newspaper reports was the person he had killed;

(xiv) the *Sin Min Daily News* reported that the murder had taken place at Block 44, Lorong 5 Toa Payoh.

It is true that PW9, on the one hand, and PW10 and PW11 on the other, gave differing versions of the statements made to them by the accused. PW9, in particular, said that the accused stated that he had injured someone, and that it was not until PW9 read the newspapers later that he realized that the injured person had died. PW10 and PW11, for their part, were certain that the accused said that he had killed a person in Toa Payoh following an argument and a fight. We were impressed by the evidence of PW10 and PW11. They had no reason to lie; PW11 in particular had been a friend of the accused since they had been children, and we believed him when he said that he had no quarrel with the accused, and bore him no grudge.

In the event, we rejected the submission of no case to answer because, in our judgment, there existed at the end of the prosecution case credible evidence which, if we accepted it as accurate, established every ingredient of the offence with which the accused stood charged. Accordingly, we were unable to accept the defence contention that no credible evidence existed which linked the accused to the murder of the deceased.

We therefore called upon the accused to enter upon his defence, and gave him the standard allocution prescribed by section 188(2) of the Criminal Procedure Code. After consultation with his counsel, the accused elected to remain silent. We were left with no alternative but to convict the accused of the offence with which he stood charged. We did so, and sentenced him to death.

Order accordingly.

Solicitors: *N.S. Kang.*

RE DOW JONES PUBLISHING (ASIA) INC.'S APPLICATION

[O.C.J. (Sinnathuray J.) 16 May 1988]

[Singapore – Originating Motion No. 135 of 1987]

Administrative Law – Ministerial decision – Review of – Ministerial order on restriction of circulation of foreign publication on the ground that it is engaging in domestic politics – What amounts to "engaging in domestic politics" – Principles of judicial review – Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.), s. 16 – Rules of the Supreme Court 1970, O. 53 – UK Supreme Court Act 1981, s. 31.

Newspapers – Foreign newspaper "engaging in domestic politics" – Restriction of – What amounts to "engaging in domestic politics" – Whether Minister's decision subject to judicial review – Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.), s. 16.

On 9 February 1987 the Minister for Communications and Information gazetted the Asian Wall Journal (AWSJ) as a newspaper engaging in the domestic politics of Singapore and ordered that its circulation be restricted to 400 copies per day, under section 16 of the Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.). This was done after the AWSJ refused to publish a letter from the Monetary Authority of Singapore in response to an article written on the Stock Exchange of Singapore Dealing and Automated Quotation Market. AWSJ challenged the Minister's orders on the following grounds: (a) the Minister had misdirected himself in law; (b) there was a procedural irregularity in that the Minister had not acted fairly; (c) the Minister's decisions were irrational; (d) they were unreasonable. The AWSJ sought an order of certiorari to quash the Minister's decision.

Held, dismissing the application: (1) what is to be regarded as "domestic politics" is a question of fact. In the absence of a statutory definition, the phrase must be given its natural and ordinary meaning. "Politics" comprehends everything that concerns the government of the country. All the multifarious and multifaceted activities with which a government is concerned is encapsulated in the phrase "domestic politics";

(2) whether the conduct of a foreign newspaper amounts to "engaging in the domestic politics of Singapore" is a matter solely for the Minister and not the court

to decide unless it can be shown that the Minister had exercised his power in bad faith or had acted irrationally or unreasonably;

(3) "judicial review" is a phrase used to describe civil proceedings brought against the state in an application for a writ of habeas corpus or for relief by way of an order of mandamus, prohibition or certiorari. Any person or body of persons having legal authority to make decisions affecting the rights of persons is subject to the supervisory jurisdiction of the High Court. But the court's power to intervene is a limited one. Judicial review is limited to a review of the decision-making process and not with the decision itself. Even the findings of fact on which the decision was reached are generally not within the scope of review;

(4) the court allowed the Attorney-General to read from the report of parliamentary debates to give the background facts relating to the amendments. However, such reports could not be looked at as an aid to construction of the statute;

(5) on the evidence, the AWSJ was aware of the Newspaper and Printing Presses Act and the nature of the Minister's powers under the Act. The Minister had not acted unfairly, in that the AWSJ had been given the opportunity to correct stories which were considered by the government to have been inaccurate and slanted. The Minister had not taken into account irrelevant considerations in relying on alleged mis-reporting and on the AWSJ's failure to publish official replies to articles published in the newspaper. There was no evidence that the Minister had acted unreasonably.

Cases referred to:

(1) *Re Application by Dow Jones (Asia) Inc.* [1988] 1 M.L.J. 222 (refd).
(2) *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1947] 2 All E.R. 680 (folld).
(3) *Puhlhofer & Anor.* v. *Hillingdon London Borough Council* [1986] A.C. 484 (refd).
(4) *Chesterfield* v. *Janssen* (1750) 2 Ves. Sen. 125; 28 E.R. 82 (refd).
(5) *Leong Kum Fatt* v. *Attorney-General* [1986] 1 M.L.J. 7 (cited).
(6) *Chief Constable of the North-West Police* v. *Evans* [1987] 1 W.L.R. 1155 (refd).
(7) *Attorney-General* v. *Fred Zimmerman & Ors.* [1986] 2 M.L.J. 89 (refd).
(8) *Beswick* v. *Beswick* [1968] A.C. 58 (refd).
(9) *Warner* v. *Metropolitan Police Commissioner* [1968] 2 W.L.R. 1303 (refd).
(10) *Davis* v. *Johnson* [1979] A.C. 264 (refd).

ORIGINATING MOTION.

Louis Blom-Cooper Q.C. (*H.E. Cashin* with him) for the applicants.

Tan Boon Teik, Attorney-General (*Jeffrey Chan,* Deputy Senior State Counsel, with him) for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: Pursuant to leave granted by the High Court on 12 August 1987 in Originating Motion No. 33 of 1987, the applicants, Dow Jones Publishing Company (Asia) Inc., the publishers of the *Asian Wall Street Journal* (hereinafter referred to as "the AWSJ") move this court in Originating Motion No. 135 of 1987 for orders of certiorari to quash (a) an order declaring the *Asian Wall Street Journal* to be a newspaper engaging in the domestic politics of Singapore, and (b) the decision restricting the sale or distribution of the AWSJ in Singapore to 400 copies until further notice made by the Minister for Communications and Information ("the Minister") on 9 February 1987 under section 18A of the Newspapers and Printing Presses (Amendment) Act 1986 ("the 1986 Act"), now section 16 of the Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.) ("the Act").

In the grounds on which relief is sought set out in the statement filed pursuant to Order 53 rules (1) and (2) of the Rules of the Supreme Court, the facts are said to be these. The AWSJ on 12 December 1986 published an article under the by-line of Mr. Stephen Duthie entitled "Singapore Exchange Puzzles Financiers". That article describes the background to the establishment by the government of a new stock exchange for small firms known as SESDAQ (the Stock Exchange of Singapore Dealing and Automated Quotation System) and the reaction thereto by some members of the financial and commercial community of Singapore.

On 12 December 1986, the editor of the AWSJ received a letter of complaint from the Director of the Banking and Financial Institutions Department of the Monetary Authority of Singapore, Mr. Koh Beng Seng, in which the latter made allegations of bias and false reporting by Mr. Stephen Duthie. Correspondence between the editor of the AWSJ and Mr. Koh Beng Seng ensued. The editor declined to publish a letter in the AWSJ so long as it contained a personal and defamatory attack on Mr. Duthie.

Then, without any prior notice to the applicants or the editor of the AWSJ, the Minister made an order, dated and gazetted on 9 February 1987, declaring the AWSJ "to be a newspaper engaging in the domestic politics of Singapore" under section 18A(1) of the Newspaper and Printing Presses (Amendment) Act 1986 and an order restricting the distribution and circulation of copies to 400 per day under section 18A(4) of the said Act.

On these facts, it is averred in the statement that the Minister had acted wrongfully in the exercise of his statutory powers in a number of ways:

one, that the Minister had misdirected himself in law; two, that there was procedural irregularity in that the Minister had not acted fairly; three, that the Minister's decisions were irrational; and four, that they were unreasonable. These are the usual grounds on which an application for judicial review is made in England for relief by way of an order for certiorari, in the exercise of the jurisdiction given to the High Court in section 31 of the Supreme Court Act 1981.

At the hearing of the application last week, Mr. Blom-Cooper for the applicants said that the issue for decision was whether the Minister had on 9 February 1987 validly exercised the statutory powers given to him in section 18A of the 1986 Act. He said that the decisions of the Minister were invalid and that they could properly be challenged under Order 53 of the Rules of the Supreme Court: see *Re Application by Dow Jones (Asia) Inc.*[1]

The submission was made for the applicants that the decisions of the Minister were flawed in five respects. First, it was said that the facts did not exist so as to attract the statutory powers given to the Minister under section 18A of the 1986 Act. The argument was that there was no evidence that the AWSJ had at any time engaged in the domestic politics of Singapore. Secondly, if the facts did exist to attract section 18A, the Minister did not properly direct himself in law. Thirdly, the Minister had taken into account irrelevant factors. Fourthly, in arriving at his decision, the Minister was in breach of his duty to act fairly. Fifthly, the Minister had, in any event, acted unreasonably in the sense that that word is used in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation.*[2] Finally, as regards the restriction of the sale and distribution of the AWSJ in Singapore, it was submitted that the Minister was in breach of the principle of proportionality.

On the other hand, the learned Attorney-General submitted that the main issue in this case was whether, on a proper construction of section 18A(1) of the 1986 Act, the decision of the Minister that the AWSJ was engaging in the domestic politics of Singapore, was a subject matter which the High Court, in the exercise of it supervisory jurisdiction, can properly inquire into by way of certiorari. I agree with him.

Before I consider the arguments on this issue, it is necessary that I first refer to the relevant legislation. The Newspaper and Printing Presses Act 1974 provides for the licensing of newspaper companies. On 1 August 1986, Parliament passed, and, on 25 August 1986, the President assented to the Newspaper and Printing Presses (Amendment) Act 1986. This Act came into operation on 1 September 1986. It is clear from a perusal of this Act that it was enacted for a specific purpose, to rectify a particular mischief in the principal Act. Section 1 contains the short title and provides for the commencement of the Act. Section 2 amends the interpretation section, section 2 in the principal Act, by providing a definition for the phrase "declared foreign newspaper"; it also makes a consequential amendment to the definition of "newspaper" in the interpretation section. A "declared foreign newspaper" means any newspaper published outside Singapore which had been declared by the Minister under section 18A(1) to be engaging in the domestic politics of Singapore. Section 3 amends section 7 of the principal Act which provides that a publisher of a newspaper must be a newspaper company unless exempted. The new subsection (3) to section 7 provides as follows:

> "(3) For the purpose of subsection (1), a newspaper shall be deemed to be published outside Singapore if its contents and editorial policy are determined outside Singapore and its sales or distribution are not intended primarily for Singapore."

Section 4 then makes the main amendment to the principal Act. It creates five new sections – section 18A to section 18E. Section 18A reads as follows:

> "18A.(1) The Minister may, by order published in the Gazette, declare any newspaper published outside Singapore to be a newspaper engaging in the domestic politics of Singapore.
>
> (2) No person shall, without the prior approval of the Minister, sell or distribute or import for or possess for sale or distribution any declared foreign newspaper.
>
> (3) The Minister may grant his approval under subsection (2) subject to such conditions as he may impose or may refuse to grant or revoke such approval without assigning any reason.
>
> (4) The Minister may restrict the sale or distribution of each issue of any declared foreign newspaper granted approval under subsection (2) to such number of copies as he thinks fit, and may require such copies to be marked in such manner as he may direct.
>
> (5) Any person who contravenes subsection (2) or fails to comply with the conditions imposed under subsection (3) or who sells or distributes any copy of a declared foreign newspaper which is not marked in accordance with subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) In any proceedings under this section it shall be presumed, until the contrary is proved, that any person found in possession of more than 5 copies of the same issue of a declared foreign newspaper had possession of them for sale or distribution."

Section 18B to section 18E are consequential provisions to section 18A. To complete this account, in the 1985 Revised Edition of the Statutes of Singapore, the Newspaper and Printing Presses Act is now Chapter 206; section 18A of the 1986 Act is now section 16 of the Act. It is to this section that reference is hereafter made in this judgment.

Now, on a careful perusal of the Act, it will be seen that there are several sections in the Act which provide for appeals to the President. In Part II, section 3(3) of the Act provides that any person to whom a licence to use a printing press is refused by the Minister, or whose licence is withdrawn by him, may appeal to the President. In Part III, section 12 thereof provides that "any person aggrieved by any refusal by the Minister to grant his approval under any section in this Part may appeal to the President whose decision shall be final". Also, in Part IV where there is a requirement for a permit to publish a newspaper in Singapore, a right of appeal is given from a decision of the Minister to the President. However, as regards those provisions brought into the Act by the amendments made in the 1986 Act, there is no appeal. Mr. Blom-Cooper has rightly observed that there are appellate rights for non-foreign newspapers but no such right is given to foreign newspapers. This is a material fact to be borne in mind in this case: Parliament has not provided a right of appeal from a decision of the Minister declaring a foreign newspaper to be a newspaper engaging in the domestic politics of Singapore.

As regards the phrase "engaging in the domestic politics of Singapore" in section 16(1) of the Act, I agree with Mr. Blom-Cooper that in the absence of a definition of the phrase, the court must construe it according to the ordinary canons of statutory construction. Where I part company with him is when he says that the phrase is confiscatory in nature and that the courts will consider the phrase narrowly. For myself, I see nothing in the phrase "engaging in domestic politics" that imports the concept of expropriation to make it confiscatory in nature. However, it is submitted that the exercise of the ministerial power interferes with the freedom of expression which includes communication or dissemination of information. But, that is not to say that the phrase *per se*, as a matter of construction can yield to the premise that it is confiscatory in nature. In my opinion, the proper canon of construction that applies to the phrase is that the words "engaging in domestic politics" must be given their natural and ordinary meaning.

Before I get to it, there is the submission of Mr. Blom-Cooper that the positive construction of the phrase is directed to the direct involvement by foreign newspapers in the electoral process of Singapore and to the espousal of party political activities. He comes to this conclusion because Parliament has used the word "engaging" as opposed to "reporting" and "politics" as opposed to "policies". I disagree. The short answer to the submission is that if Parliament had intended that to be the case, it would have said so in many words and not couched the Minister's power in broad terms in the phrase "engaging in the domestic politics" of Singapore.

As I have said, the phrase must be given its natural and ordinary meaning and not a restricted and technical meaning as contended for by the applicants. Here, I agree with the learned Attorney-General that what is to be regarded as "domestic politics" is a question of fact and degree. Using the words of Lord Brightman in *Puhlhofer & Anor.* v. *Hillingdon London Borough Council*[3] (at p. 518), he said the phrase covers "a broad spectrum ranging from the obvious to the debatable to the just conceivable". In its ordinary meaning, to be found in the *Oxford English Dictionary*, "politics" is the "science and art of government". As Lord Hardwicke said more than 250 years ago, "politics comprehends everything that concerns the government of the country": see *Chesterfield* v. *Janssen*[4] at p. 156. And, in these modern times, the concerns of a government are many and varied. All the multifarious and multifaceted activities with which a government is concerned is encapsulated in the phrase "domestic politics". I accept the submission made for the Minister which is supported by authority that where statutory power of this kind is given to a Minister, then it is the "duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power", save in those cases where it can be shown that the decision was perverse: see *Puhlhofer's* case, also at p. 518. I am, therefore, of the opinion that in the context of section 16(1) of the Act, whether the conduct of a foreign newspaper amounts to "engaging in the domestic politics of Singapore" is a matter solely for the Minister, and not for this

court to decide unless it can be shown on the facts the Minister had exercised his power in bad faith or has acted irrationally or unreasonably in the *Wednesbury*[2] sense. Contrary to the submission of Mr. Blom-Cooper in his reply, I am also of the opinion that if the court is the arbiter of this power, then the court would be usurping the power which Parliament has in its wisdom given to the Minister.

This leads me to the next issue, whether on the facts it can be said that there were no grounds for the Minister to declare that the AWSJ is engaging in the domestic politics of Singapore. Before I do that I want to refer to the law relating to certiorari applicable to this case.

On the law relating to certiorari, at the hearing, I was referred to a number of cases, but I do not propose to refer to all of them in this judgment. I start with a general observation on the use of the phrase "judicial review". This phrase has long been used by judges in Commonwealth countries in the administration of justice. It has been used as a shorthand to describe civil proceedings brought against the state, of an application for a writ of *habeas corpus* or for relief by way of an order for mandamus, prohibition or certiorari. However, in the last decade or so, the phrase "judicial review" has been given a statutory meaning in some Commonwealth countries. When I gave leave to the applicants to make an application under Order 53 for orders of certiorari, I explained that in England an application by way of judicial review was made pursuant to section 31 of the Supreme Court Act 1981. The position in Australia and New Zealand is that there are special statutes which give the courts jurisdiction to review by way of judicial review, the administrative decisions of public bodies. No such statutory power to hear applications by way of judicial review has been given by Parliament to the High Court in Singapore. The powers of the High Court are the same as were vested in the High Court in England before the enactment of their section 31.

In dealing with the law relating to certiorari applicable in Singapore, I use the phrase "judicial review" in the general sense that I have explained. The role of the courts in an application for judicial review has been confirmed by the Court of Appeal in the case of *Leong Kum Fatt* v. *Attorney-General.*[5] In this case the applicant applied for an order of certiorari to quash a decision of the Commissioner of Police to dismiss him from the Singapore Police Force. Mr. Justice Chua who heard the case (see [1984] 2 M.L.J. 197 at 200) said:

> "The scope of judicial review is limited only to the review of the decision-making process, that is the hearing, and not the decision itself. So long as the board directs itself to the right inquiry and asks the right questions within its permitted area and not outside that area and acts according to natural justice the court would not intervene. The court is concerned only with the hearing not the conduct of the investigations, the findings of the Board or the reasons given by the board for its findings."

On appeal, the Court of Appeal, in dealing with the same point, said at p. 10:

> "In considering the submission of the appellant that the board has misdirected itself on the evidence, we have to reiterate that the tribunal's findings of fact are not open to review by the court in the exercise of its supervisory powers except on the principles laid down in *Edwards* v. *Bairstow* ([1956] A.C. 14 at 36)."

So, the law is that any person or body of persons exercising public duties, that is to say, having legal authority to make decisions affecting the rights of persons is subject to the supervisory jurisdiction of the High Court. But the scope of the court to intervene in the decision by way of judicial review is a limited one. The power to make an order by way of certiorari is confined to the review of the decision-making process, but not to review the decision itself. Even the findings of facts on which the decision was reached are generally not within the scope for review.

In concluding this subject, it is not without interest to note that even in England, where, in the exercise of the statutory power of judicial review, principles of administrative law are being developed on a case by case basis, in the well-known case of *Chief Constable of the North-West Police* v. *Evans*[6] Lord Brightman said at p. 1173:

> "I turn secondly to the proper purpose of the remedy of judicial review, what it is and what it is not. In my opinion the law was correctly stated in the speech of Lord Evershed, at p. 96. His was a dissenting judgment but the dissent was not concerned with this point. Lord Evershed referred to 'a danger of usurpation of power on the part of the courts ... under the pretext of having regard to the principles of natural justice.'

He added:

> "I do observe again that it is not the decision as such which is liable to review; it is only the circumstances in which the decision was reached, and particularly in such a case as the present the need for giving to the party dismissed an opportunity for putting his case.

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

One other case would suffice. In *Puhlhofer's* case,[3] in 1986 Lord Brightman said:

"My Lords, I am troubled at the prolific use of judicial review for the purpose of challenging the performance by local authorities of their functions under the Act of 1977. Parliament intended the local authority to be the judge of fact. The Act abounds with the formula when, or if, the housing authority is satisfied as to this, or that, or have reason to believe this, or that. Although the action or inaction of a local authority is clearly susceptible to judicial review where they have misconstrued the Act, or abused their powers or otherwise acted perversely, I think that great restraint should be exercised in giving leave to proceed by judicial review. The plight of the homeless is a desperate one, and the plight of the applicants in the present case commands the deepest sympathy. But it is not, in my opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use to monitor the actions of local authorities under the Act save in the exceptional case. The ground upon which the courts will review the exercise of an administrative discretion is abuse of power – *e.g.* bad faith, a mistake in construing the limits of the power, a procedural irregularity, or unreasonableness in the *Wednesbury* sense – unreasonableness verging on an absurdity: see the speech of Lord Scarman in *R.* v. *Secretary of State for the Environment, ex parte Nottinghamshire County Council* ([1986] A.C. 240, 247-248). Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely."

Now, I come to the facts. Mr. Fred Lee Zimmerman is the editor and publisher of AWSJ. In his affidavit, he states that AWSJ is distributed in many countries in Asia, ranging from Japan to India on the one side, and South Korea to the Philippines on the other, and in Australia. Until the order was made by the Minister, the circulation of AWSJ was approximately 35,000 copies daily, with 5,000 of them distributed in Singapore.

According to Mr Zimmerman, the AWSJ staff correspondents work in 12 Asian countries. He said that they are expected to conform with local laws, to report on matters of local and international interest of significance and to investigate and analyse political and economic development of special interest to the AWSJ readership. He said that as professional journalists, the correspondents report, without fear or favour, the facts as they believe them to be on the basis of their investigations. He also said: "The AWSJ itself investigates, and where necessary corrects, all material errors in its stories that are brought to its attention, and frequently decides to publish correspondence from persons who complain about its articles."

At the material time Mr. Stephen Duthie was the AWSJ staff writer in Singapore. He was based here since July 1984. Mr. Zimmerman affirms in paragraph 4 of his affidavit that "none of his despatches from Singapore published in the AWSJ has been made the subject of legal action". This is not correct. Mr. Stephen Duthie was cited by the Attorney-General as the third respondent in proceedings for contempt of court in respect of an article he wrote which was published in the AWSJ on 17 October 1985: see *Attorney-General* v. *Fred Zimmerman & Ors.*[7]

Next, a relevant event was the promulgation and enactment of the Newspaper and Printing Presses (Amendment) Act 1986 which I have already dealt with. In the course of the hearing, I allowed the learned Attorney-General to read from Hansard the speech of the Minister of State for Communications and Information when, on 31 July 1986, he moved the second reading of the Bill. This was strenuously opposed by Mr. Blom-Cooper. He was right, of course, in his submission that Hansard may not be looked into as an aid to construction of a statutory provision. Certainly, in the present case, what was said by the Minister of State was quite irrelevant for the construction of the phrase "engaging in the domestic politics" of Singapore. I accept that there are good reasons for this rule of restraint. In Craies on *Statute Law*, 7th Ed. at p. 129 there is the following passage:

"In 1968 Lord Reid said that there were purely practical reasons why debates in either House are not allowed to be cited and, as examples, he mentioned the time and expense involved in the reading of all the debates on an Act, the difficulty of access by counsel, *etc.* to reports of earlier Acts, *etc.*, but later in the same year he thought that there was 'room for exception where examining the proceedings in Parliament would almost certainly settle the matter immediately one way or another.' "

The two cases are: *Beswick* v. *Beswick*[8] and *Warner* v. *Metropolitan Police Commr.*[9] There is also a more recent case on this subject which Mr. Blom-Cooper cited to me: *Davis* v. *Johnson.*[10]

In the present case, there were two reasons why I allowed the learned Attorney-General to

read from Hansard. One was for him to give the background facts relating to the amendments in the 1986 Act. More importantly, the other, was for him to demonstrate that the AWSJ knew or ought to have known of the reasons for the amendments made to the principal Act. In the event, recourse was not necessary to Hansard for these purposes for there is an exhibit in the affidavit of Mr. Tan Guong Ching, of an article published in the AWSJ on 27 May 1986 in the by-line of Mr. Francis T. Seow. The headline was "Press Bill Doesn't Make Sense for Singapore". The opening paragraphs are as follows:

"In January, Wong Kan Seng, the acting Minister for Community Development and Minister of State for Communications and Information, proposed that steps be taken to penalize foreign publications that 'consistently interfered' in Singapore's domestic politics 'for their own ends'. On 5 May, the Newspaper and Printing Presses (Amendment) Bill was introduced in Parliament.

Under the Bill, the Minister has been invested with the sole discretion to decide if any foreign publication is 'engaging in the domestic politics' of Singapore. If he decides that a particular foreign publication is doing so, it would be an offence to 'sell, distribute, import for or possess for sale or distribution' such publication without his prior approval. To reproduce such a publication for sale or distribution would also be an offence. The maximum penalty is a $10,000 fine or two years' imprisonment or both."

Although the by-line of the report held out that it was an article written by Mr. Francis Seow, then President of the Law Society of Singapore, Mr. Seow has stated in a letter to the *Straits Times* that he did not write the article. It was in fact a press release by the Law Society which the AWSJ chose to publish it in its own way.

There was another article in the AWSJ. In the 4 August 1986 issue of the AWSJ, Mr. Stephen Duthie wrote an article which carried the headline "Singapore's Parliament Passes Press Measure".

In the article Mr. Stephen Duthie said that the Minister of State for Communications and Information had told Parliament that "the vast majority of the large foreign publications report on Singapore objectively and fairly." But, he added, "there has been a tendency on the part of a few foreign publications, a very small minority, which try to stir up Singaporean feelings on local issues, even on sensitive issues like race and religion." "If foreign publications show a pattern of suspect reporting, they are considered to have stepped out of bounds of professional journalism into the realm of local politics," Mr. Wong said. He said the three kinds of reports that could cause a Communications Minister to take action are: articles on local issues found to be "slanted, distorted or partisan"; articles that attempt to influence Singaporeans on issues that foreigners "have no business to be involved in", and articles that "cast aspersions on our established institutions". From these two articles, it is clear beyond doubt that the editor and staff of the AWSJ knew of the changes in the local laws. In the words of Mr. Zimmerman they were "expected to conform with local laws".

Another relevant matter is found in paragraph 6 of the affidavit of Mr. Tan Guong Ching. He is a Permanent Secretary in the Ministry of Communications and Information. He filed an affidavit in these proceedings for the Minister. He said that the AWSJ continued from time to time to publish reports from correspondents in Singapore and features about Singapore which besides being critical of the Singapore Government and the public institutions of Singapore contained errors, omissions and misrepresentations and appeared to be designed to portray these bodies and Singapore generally in a negative light to the AWSJ readers. He referred to ten such articles published between December 1985 and October 1986; five of them were published after Parliament had passed the Newspapers and Printing Presses (Amendment) Act 1986.

In considering the background facts, there is the crucial event not denied by the applicants referred to in paragraph 12 of the affidavit of Mr. Tan Guong Ching:

"(12) On 23 September 1986, a meeting was held at the PSA Building between the Singapore Government, the *Wall Street Journal* and the AWSJ. Present at this meeting were –

(a) Mr. Wong Kan Seng, Minister of State for Communications and Information;

(b) Brig-Gen Lee Hsien Loong, Ag Minister for Trade and Industry;

(c) Mr. Peter Kann, Associate Publisher and Executive Vice-President of the *Wall Street Journal;*

(d) Mr. Edward Cony, President, Dow Jones Publishing Co. (Asia) Ltd;

(e) Mr. Barry Wain, Managing Editor, AWSJ; and

(f) Mr. Fred Zimmerman himself.

At this meeting, Mr. Wong Kan Seng drew attention to the slanted reporting by the AWSJ against the Singapore Government and expressed the Singapore Government's

concern over such reports of the AWSJ over the past few years. He informed the parties present that the Government might have to apply the provisions of the NPPA to the AWSJ and restrict its circulation in Singapore."

By now then, as Mr. Tan Guong Ching said, in his affidavit, the AWSJ was well aware of the concerns of the Singapore Government over foreign publications engaging in the domestic politics of Singapore; the reasons behind the enactment of the amendments to the Act; the circumstances which will cause the government to invoke its powers under the Act to restrict the circulation of a foreign newspaper; and the political will of the Singapore Government to exercise such powers. The AWSJ was particularly aware of the concern of the Singapore Government over the manner it has sought to portray the government in its reports on Singapore and that the government would, if it continues such a course of action, invoke the Act to restrict its circulation in Singapore.

It is in this setting of the events I have narrated that one must consider the article of Mr. Stephen Duthie, published in the AWSJ on 12 December 1986 headlined "Singapore Exchange Puzzles Financiers" ("the SESDAQ article"). It was this article which finally led the Minister to declare the AWSJ to be a newspaper engaging in the domestic politics of Singapore.

In support of the application for certiorari to quash the two decisions of the Minister, Mr. Zimmerman in paragraphs 6 to 9 of his affidavit sets out the applicants' case:

"(6) In the 12 December 1986 edition of the AWSJ we published an article written by Stephen Duthie and entitled 'Singapore Exchange Puzzles Financiers' (exhibited hereto and marked 'FLZ 1'). This was a long and carefully researched article about SESDAQ, a new Stock Exchange due to open in 1987. It explained the reasoning behind the establishment of the new Exchange, and reported various opinions about its role and functions. The article, while it does refer to financial policies, makes no reference whatsoever to the domestic politics of Singapore, either by way of reportage or quotation of opinion. It was neither the intention nor the effect of the publication of this article to engage in any way in the domestic politics of Singapore. The new Stock Exchange would be available to investors, whatever their nationality and wherever they resided or carried on business.

(7) Subsequently I received a letter dated 12 December from Mr. Koh Beng Seng, Director of the Banking and Financial Institutions Department of the Monetary Authority of Singapore, alleging that Mr. Duthie was 'biased' and 'prejudiced', and that his article contained errors of fact. One of his statements was alleged to be 'completely false'. (Letter exhibited hereto and marked 'FLZ 2'.) In view of the seriousness of the allegations, I instructed my Managing Editor to conduct a full enquiry, including re-interviews of persons who had provided information for Mr. Duthie's article. This enquiry took several weeks and satisfied me entirely as to the fairness and accuracy of the article and of the genuineness of the opinion quoted in it; of Mr. Duthie's *bona fides* in writing it, and that Mr. Koh's letter contained certain incorrect statements and unjustifiable slurs on Mr. Duthie's professional reputation. I replied to Mr. Koh, setting out my conclusions and explaining why we could not publish his letter as it stood. I offered to publish any letter he might care to write expressing his point of view on the subject of the original article (my response is exhibited hereto and marked 'FLZ 3'). I received a further letter from Mr. Koh dated 17 January 1987 which accused Mr. Duthie of making 'mischievous' and 'scurrilous' attacks (exhibited hereto and marked 'FLZ 4'), to which I responded by letter dated 23 January 1987 (exhibited hereto and marked 'FLZ 5').

(8) The first letter received by me from Mr. Koh (exhibited hereto and marked 'FLZ 2') was forwarded with an accompanying instruction that it was 'for your publication at an earliest date' from James Fu Chiao Sian, on behalf of the respondent Minister. A further letter from Mr. Fu, dated 23 December 1986 and stamped 'confidential' enquired as to whether I would publish the letter (letters from Janes Fu exhibited hereto and marked 'FLZ 6(a) & (b)').

(9) On 9 February 1987, I was notified of an order made on that date by the respondent under the Newspaper and Printing Presses Act (1974) as amended declaring that the AWSJ had 'engaged in domestic politics' (the declaration) and directing that the newspaper circulation be restricted to 400 copies daily (the restriction order) (declaration as gazetted and restriction order as notified, exhibited hereto and marked 'FLZ 7 & FLZ 8'). A press release issued by the respondent Minister on the same day explained that 'the action is necessary because the AWSJ has persistently refused to publish a Singapore Government reply to an AWSJ artlcle'. (Statement exhibited hereto and marked 'FLZ 9'.)

On these facts, Mr. Blom-Cooper for the applicants advanced two arguments. The first argument was that everything points to the Minister having relied exclusively on the refusal of the AWSJ to publish the letters sent on behalf of the Government of Singapore, and that was why the Minister had declared the AWSJ was engaging in the domestic politics of Singapore. A refusal to publish correspondence between an editor and a government spokesman with respect to an article describing and commenting upon a financial institution in Singapore cannot, he said, constitute a ground for the exercise of the ministerial power. To use that reason to declare that the AWSJ was engaging in the domestic politics of Singapore was a misdirection by the Minister in the exercise of his power under section 16(1) of the Act.

The second argument was more directed to the affidvit of Mr. Tan Guong Ching, and in particular

to paragraph 6 thereof relating to the past conduct of the AWSJ. Mr. Blom-Cooper said that the past misdeeds of the AWSJ cannot be relied upon by the Minister now for the declaration he made on 9 February 1987. As misreporting prior to the 1986 Act was not "engaging in the domestic politics", the Minister had misdirected himself. It was also submitted that as it is now said in the affidavit that the Minister had taken into account past misdeeds of the AWSJ then, as a matter of law, the Minister was acting in bad faith.

In dealing with these submissions, it is necessary to inquire how the Minister came to make the two decisions which the applicants have challenged. The explanations of the Minister are summarized in paragraphs 15 to 25 of the affidavit of Mr. Tan Guong Ching:

"(15) The Singapore Government takes the view that the 'SESDAQ article' constituted another instance of the AWSJ engaging in the domestic politics of Singapore.

(16) The main point in the SESDAQ article is that SESDAQ was established by the government regardless of commercial considerations to enable the government to unload state-controlled and government-backed companies. This amounted to a charge that the Government of Singapore deliberately set up SESDAQ to cheat potential investors and the public of Singapore. This is a devastating allegation against the Government of Singapore itself and the many persons, both in the public and private sectors, who have devoted their time, energies and intellectual effort towards establishing SESDAQ.

(17) Although Zimmerman alleges in paragraph 6 of his affidavit that the article was a 'long and carefully researched article' about SESDAQ, nowhere in the article did the writer, Mr. Stephen Duthie, identify any of the sources from whom or where he derived the information for his article.

(18) The Singapore Government is aware that on 11 December 1986 *i.e.* the day before the publication of the SESDAQ article, Mr. Duthie was invited to attend a press conference to be held by the SESDAQ Working Committee on 12 December 1986. Mr. Duthie failed to turn up. The government concludes from this either that Mr. Duthie was totally disinterested in the views of the SESDAQ Working Group or that the AWSJ had already devised how SESDAQ was to be portrayed to its readers and that no further facts, explanations or clarifications needed to be considered.

(19) Notwithstanding the gravity of the innuendo in the article and that the article which was per se an act of engaging in the domestic politics of Singapore, the initial choice of response of the Government was to forward to the AWSJ a letter from the Monetary Authority of Singapore (MAS) dated 12 December 1986 ('the MAS reply') seeking to put right the errors and misrepresentation inherent in the SESDAQ article and expressing the Government's stand regarding the allegations made (see Zimmerman, exhibit 'FLZ-2').

(20) Although on previous occasions the AWSJ had published the Government's replies to various errors and misrepresentations in its reports and articles, on this occasion the AWSJ did not publish the MAS reply. In fact, it did not respond at all to the MAS reply until 2 January 1987.

(21) The AWSJ replied on 2 January 1987 (see Zimmerman, exhibit 'FLZ-3'). The gist of the reply was that the AWSJ was satisfied with the veracity of the facts in the SESDAQ article, that the article was fair and accurate, a measured and appropriate assessment of the subject and that the MAS reply was defamatory of Duthie and contained errors of fact. Therefore they would not publish it.

(22) In response, MAS wrote to the AWSJ on 17 January 1987 (see Zimmerman, exhibit 'FLZ-4') asking where in its earlier letter it had defamed Stephen Duthie. It also sought to clarify the facts alleged by Duthie in his article which the AWSJ said it has established as true. It concluded by warning the AWSJ that if it persists in refusing to publish the MAS reply and subsequent correspondence the government will have to draw its own conclusions.

(23) On 23 January 1987, the AWSJ replied. Zimmerman stated:

'... we don't believe it serves our readers to print personal attacks or allegations of errors that we're confident don't exist.' (Zimmerman, exhibit 'FLZ-4', para. 2).

From this the government concludes that the AWSJ regards that it is for the AWSJ and itself alone to determine whether there has been defamation, whether a fact published is true or not *and* whether it is in the interest of its readers for any complaint or clarification of any errors in any of its reports or articles to be published.

(24) From the totality of the circumstances and the tenor of the SESDAQ article as well as the refusal by the AWSJ to publish the MAS reply and, subsequently, despite being requested to do so, all the correspondence between MAS and itself, which would have set out for its readers the respective positions of the Singapore Government and the AWSJ's editors, the Government concluded that the AWSJ is deliberately refusing to do anything which might whittle down the initial effect of the SESDAQ article on its readers.

(25) It was apparent to the government from the course of conduct of the AWSJ, culminating in its persistent refusal to allow its readers to read the government's responses to the allegations in the SESDAQ article, that the AWSJ was throughout this episode engaging in the domestic politics of Singapore. The government therefore concluded that there was sufficient reason for section 16 of the NPPA to be invoked to declare the AWSJ to be a foreign newspaper 'engaging in the domestic politics of Singapore' and to restrict its circulation to 400 copies per day ('the restriction order')."

The facts speak for themselves. They show that the Minister in making his decision to declare the AWSJ to be a newspaper engaging in the domestic politics of Singapore had considered all the relevant facts and had not taken into account any irrelevant facts. He had also been altogether fair to the

AWSJ because though, as he said, the article was *per se* an act of engaging in the domestic politics of Singapore, he did not thereupon exercise his powers under section 16 of the Act. His initial choice of response was to give the AWSJ an opportunity to put matters right. It was only when the AWSJ refused to do so that he decided to make the declaration and restrict the circulation under section 16 of the Act. His exercise of the powers necessarily involved political considerations which in turn required him to exercise his political judgment on the totality of the facts before him. On the facts before me, I find that his decision-making process has not in any way been flawed. In my judgment, the exercise of the powers by the Minister under sections 16(1) and 16(4) of the Act cannot be impugned.

One of the submissions made for the applicants was that the only reason the Minister had declared the AWSJ to be engaging in the domestic politics of Singapore was the refusal by the AWSJ to publish the letters sent by the Singapore Government. I am satisfied that the totality of the facts puts asunder the submission.

It is, however, true that the Singapore Government's press release of 9 February 1987 had said that the action was "necessary because the AWSJ has persistently refused to publish a Singapore Government reply to an AWSJ article". It is also true that Mr. Tommy Koh, the Singapore Ambassador in the United States of America, wrote to Mr. Carlfon, the Director of the Voice of America, in the same vein. As these were matters that were raised at the hearing, in the course of an argument, we do not have an explanation from the Minister or from Mr. Tommy Koh as to why the public and Mr. Carlfon were only given the limited explanation. Without the benefit of the knowledge of what they have to say in the matter, one can only venture to give one's own reasons. The learned Attorney-General has said that the statement in the press release was the last straw that broke the camel's back. The facts support this view. For my part I would say that the press release was an exercise in public relations. It was a rationalization of what was in fact the tip of the iceberg. As for Mr. Tommy Koh's letter, when he responded to the Voice of America editorial broadcast on 11 February 1987, it is to be inferred that he had with him the press release. But, whatever the reasons may be, it certainly is the case that the Minister was not required to give a full explanation of his decision-making process at that stage, though he would be obliged to do so in Parliament. Once, however, the applicants challenged the decision of the Minister in the courts, as they have done so in these proceedings by way of certiorari, then, of course, it was incumbent on the Minister to explain his decision-making process to the court. This he has done and I have dealt with it.

Another submission was on the affidavit of Mr. Tan Guong Ching. Having made the complaint that it was filed many months after the applicants had commenced proceedings to challenge the decision of the Minister, it was submitted that the explanations given in the affidavit were an after-thought, and that that was evidence of bad faith on the part of the Minister.

Let me set out the facts. The applicants commenced proceedings in Originating Motion No. 33 of 1987 for leave to apply for judicial review on 11 May 1987. It was an *ex parte* application, heard *inter partes*. It is sufficient to say that on 12 August 1987 leave was given on terms to apply for two orders of certiorari. The applicants were required to amend the several documents they had filed in the proceedings. This was done on 23 September 1987. Since then, no further step has been taken in those proceedings.

As a matter of procedure, the applicants then took an unusual course. New proceedings were commenced in Originating Motion No. 135 of 1987 and, in the notice of originating motion filed on 26 November 1987, there is the reference to the leave granted in the earlier proceedings. However, the documents in support of this new originating motion are all intituled "Originating Motion No. 33 of 1987". Those documents have a heading, the "Amended Statement" and "Amended Affidavit" when in fact none was made in the latter proceedings. Moreover, they bear no dates to when they were filed in Originating Motion No. 135 of 1987. It appears in a minute in the cause file that on 15 January 1988 there was a hearing before Mr. Justice Lai Kew Chai on the form and manner of the application. Then, there is another minute dated 29 January 1988 when the parties again appeared before Mr. Justice Lai. There is a note that Dr. Myint Soe for the applicants told the learned judge: "We have filed the papers." Mr. Jeffrey Chan for the Attorney-General had said: "We will be filing an affidavit." And, there is the order of Mr. Justice Lai that the application be adjourned for a date to be fixed by the Registrar.

At the hearing, I was not told when the Registrar had given the dates for the hearing of this

application nor have I enquired into the matter. However, the affidavit of Mr. Tan Guong Ching for the Minister was filed on 18 April 1988. On these facts, it was therefore not right for Mr. Blom-Cooper to say that there was considerable delay. He gave a double digit figure of months of delay. He was wrong. There was no delay whatsoever in the filing of the affidavit for the Minister as the application for leave was only regularized close to the end of January 1988. There is no foundation, therefore, for the argument about after-thought and bad faith.

Finally, I want to say a few words on the submission for the applicants made on paragraph 6 of the affidavit of Mr. Tan Guong Ching. In what was said in this paragraph, it was urged upon me that the Minister had, in making his decision, taken into account the misdeeds of the AWSJ prior to the enactment of the 1986 Act, and this was fatal to his decision. I disagree. First, of the ten articles referred to in paragraph 6, five were published after Parliament had passed the 1986 Act. Secondly, there is nothing in paragraph 6 to say that the Minister had in fact directed his mind to any of those articles in making his decision. It is clear when one looks at the affidavit carefully, that paragraph 6 merely gives the background facts, of what the AWSJ continued to report from time to time. No reference is made in this paragraph, as are stated from paragraph 15 onwards, on the decision-making process of the Minister. Thirdly, even if he had considered the articles in paragraph 6 in making his decision on 9 February 1987, he was not giving retrospective effect to the 1986 Act. I cannot understand how the rule against retrospective operation of a statute which protects existing or vested rights can apply to protect something that is in the mind of a person. Then again, what vested rights did the AWSJ have before the 1986 Act. It had a vested right to print and distribute copies of the AWSJ in Singapore. Again, I do not understand how it can be said that before the 1986 Act, the AWSJ had acquired vested rights to commit misdeeds in its reports and articles in the AWSJ.

It remains for me to summarize what I have said in this judgment. First, the decision whether a foreign newspaper is or is not engaging in the domestic politics of Singapore is for the Minister to make and not for the courts. Secondly, there were ample facts to attract the statutory powers given to the Minister under section 16 of the Act. Thirdly, the Minister had taken into account only relevant facts, and had not considered any irrelevant matters. Fourthly, in the decision-making process, the Minister had, at all times, acted fairly and had afforded the AWSJ every opportunity to rectify the grave errors in the scathing attack in the article on SESDAQ. Fifthly, there is no evidence that the Minister had in any way acted unreasonably. Lastly, though I have not dealt with it in this judgment, the principle of proportionality has not even yet been accepted in England as a principle of administrative law.

The application for orders of certiorari is dismissed with costs.

Application dismissed.

Solicitors: *Murphy & Dunbar.*

PETER THAM WING FAI v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) 10 May 1988]

[Singapore – Magistrate's Appeal No. 345 of 1986]

Criminal Law – Forgery – Documents purported to be valuable securities – Whether share certificate a valuable security – Sentence – Penal Code (Cap. 103, 1970 Ed.), ss. 30, 71(1) & 467.

Criminal Procedure – Sentencing – Distinct offences – 36 charges of forging share certificates and transfer forms – Whether each charge a "distinct offence" – "Every distinct offence" – Meaning of – Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 167.

The appellant pleaded guilty to 36 charges of forging documents which purported to be valuable securities, being offences punishable under section 467 of the Penal Code (Cap. 103, 1970 Ed.). He was sentenced to four years' imprisonment on each of the 36 charges, to run concurrently except sentences on two of the charges to be served consecutively. Effectively, the appellant has to serve a total of eight years' imprisonment.

The appellant appealed against the decision of the trial judge in respect of this two rulings, *i.e.* that a share certificate is a valuable security and that section 71(1) of the Penal Code does not apply. The appellant contended that the offences were all part of a single transaction and were not distinct offences for the purposes of sentencing. The appellants also appealed against the sentences imposed.

Held, dismissing the appeal: (1) section 30 of the Penal Code defines "valuable security" as any document by which a legal right is, *inter alia*, created, or whereby a person acknowledges that he lies under a legal liability. A share certificate is more than just evidence of title to shares. The purpose of share certificates is to give to the holders of shares additional facilities for dealing with and transferring